

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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UNITED STATES OF AMERICA :  
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-vs- : Case No. 1:16-cr-143  
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MOHAMAD JAMAL KHWEIS, :  
Defendant. :  
:  
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SENTENCING HEARING

October 27, 2017

Before: Liam O'Grady, USDC Judge

APPEARANCES:

Dennis M. Fitzpatrick and Raj Parekh,  
Counsel for the United States

John K. Zwerling and Jessica N. Carmichael,  
Counsel for the Defendant

The Defendant, Mohamad J. Khweis, in Person

1                   THE CLERK: The Court calls case 1:16-cr-143, the  
2 United States of America versus Mohamad Jamal Khweis for  
3 sentencing.

4                   May I have the appearances, please, first for the  
5 Government.

6                   MR. FITZPATRICK: Thank you. Good morning, Your  
7 Honor. Dennis Fitzpatrick and Raj Parekh on behalf of the  
8 United States.

9                   THE COURT: Good morning.

10                  MR. PAREKH: Good morning, Your Honor.

11                  MR. ZWERLING: Good morning, Your Honor. John  
12 Zwerling and Jessica Carmichael for Mr. Khweis, who is present  
13 in court.

14                  THE COURT: All right, good morning to you.

15                  Good morning, Mr. Khweis.

16                  THE DEFENDANT: Good morning.

17                  THE COURT: All right. This comes on for post-trial  
18 motions and also sentencing. Are the parties ready to proceed?

19                  MR. FITZPATRICK: Yes, Your Honor.

20                  THE COURT: All right. Do you want to do the  
21 post-trial motions first? I think maybe that makes sense.

22                  Ms. Carmichael.

23                  MS. CARMICHAEL: Yes, Your Honor.

24                  THE COURT: Well, it's your motion, absolutely, go  
25 ahead.

1 MS. CARMICHAEL: Your Honor, would Your Honor prefer  
2 to hear the Rule 33 motion for a new trial first or the Rule 29  
3 judgment of acquittal?

4 THE COURT: 33.

5 MS. CARMICHAEL: Thank you, Your Honor.

6 As Your Honor is well aware, during trial in this  
7 case the Government presented a document, to which the defense  
8 objected, which was purportedly an ISIS document and labeled  
9 Mr. Khweis as a fighter.

10 Throughout the trial the Government repeated this  
11 theme over and over and over again. The defense, of course,  
12 challenged the authenticity and the basis for that entry. And  
13 the Government in its closing argument even suggested that the  
14 defense might attack the document, but that everything else is  
15 correct in that document and, therefore, the fighter entry was  
16 correct as well.

17 Since that time, Your Honor, a new document was  
18 recovered. And this new document has two entries for Mr.  
19 Khweis. And in the Remarks and in the Notes column, the entry  
20 is blank. For other individuals it lists them as fighter, but  
21 for Mr. Khweis there is no such designation.

22 This is exculpatory, Your Honor, and it undermines  
23 the confidence in the jury's verdict. Because the Government  
24 repeated this so often throughout the case and as it maintains  
25 that Mr. Khweis was in fact a fighter, it significantly

1 undermines that notion and makes it more likely that the jury  
2 would have believed that that was not in fact Mr. Khweis'  
3 intent when he went over there.

4                   Additionally, Your Honor, the entries, the new  
5 entries that are blank are subsequent to the initial entry,  
6 which makes it even more likely that that initial entry was in  
7 fact incorrect, Your Honor.

8                   The Government indicates that this document is  
9 inculpatory, but we simply disagree with that. The fact that  
10 other individuals are listed as fighters but Mr. Khweis is not  
11 listed as a fighter on that document, is clearly exculpatory.

12                  Your Honor, this is consistent with innocence,  
13 inconsistent with guilt. And I think that it's particularly  
14 worth noting that with respect to Count 3, this document has a  
15 significant value because the Government relied heavily on  
16 Pinkerton, in Pinkerton liability, discussing that Mr. Khweis  
17 conspired with other fighters and resided at a safe house with  
18 other fighters. And, therefore, it undermines that argument  
19 significantly and undercuts the Pinkerton theory, which was the  
20 Government's case.

21                  THE COURT: Well, how do you respond to the  
22 Government's argument that he was really charged with the  
23 material support being as personnel and services, not as a  
24 fighter?

25                  And also that, you know, their theory that under the

1       Pinkerton, as you said in Count 3, that he clearly knew that  
2 ISIL was a terrorist organization and engaged in battles  
3 throughout the Middle East, and that it's not necessary that he  
4 actually have been designated as a fighter, it's really not  
5 relevant to the elements of the offense.

6           MS. CARMICHAEL: I think that that argument would  
7 hold more weight had the Government not relied so heavily on  
8 this document and this designation as a fighter during trial.  
9 That was clearly what the Government was after in the jury  
10 verdict.

11           THE COURT: One of the documents said fighter, the  
12 other did not, right? So you had it both ways. And you made  
13 contrary arguments, right?

14           MS. CARMICHAEL: That's correct, Your Honor. And  
15 this adds significantly more weight to these defense arguments.

16           THE COURT: Okay. All right, thank you.

17           Mr. Parekh.

18           MR. PAREKH: Thank you, Your Honor.

19           Your Honor, based on the quantum of evidence that was  
20 presented to the jury in this case, the defendant is simply not  
21 entitled to a new trial given this newly discovered document.

22           The evidence demonstrated that Mohamad Khweis heeded  
23 the call to jihad, incessantly engaged in epic proportions of  
24 self-deception, and became the consummate utility player for  
25 ISIS. I use the phrase "utility player" because the evidence

1 showed that he really was the Jack of all trades for the  
2 organization, not simply someone who was in the pipeline to be  
3 a fighter.

4 As Your Honor just alluded to, the Government was  
5 required to prove that the defendant either provided material  
6 support or resources in the form of personnel or services.  
7 Going back to the theme of Mohamad Khweis being the Jack of all  
8 trades, he wanted to be a suicide bomber for ISIS.

9 When ISIS needed him to travel with ISIS fighters to  
10 multiple safe houses across war zones in Syria and Iraq, he was  
11 hired for the position.

12 When ISIS members and fighters needed money, he gave  
13 them money. When ISIS needed his blood, he allowed them to  
14 draw it. When ISIS needed someone to cook and care for wounded  
15 fighters, Mohamad Khweis multitasked and filled that role as  
16 well.

17 When an injured fighter needed to conceal his online  
18 activity and disguise his location, the defendant provided him  
19 the means to do so.

20 When ISIS needed him to attend ISIS lectures,  
21 including sermons that always ended with "may God destroy  
22 America," Mohamad Khweis complied.

23 When ISIS needed someone to constantly watch military  
24 videos with fellow ISIS members for inspiration, Mohamad Khweis  
25 said, put me in coach, whatever the team needs.

1                   What these examples demonstrate is that over the  
2 course of two-and-a-half months this defendant gave himself as  
3 personnel to ISIS and served the most lethal terrorist  
4 organization on the planet in different positions and different  
5 roles.

6                   There is nothing about this newly discovered document  
7 that undermines the confidence in the jury's swift and decisive  
8 guilty verdict on all three counts. At the end of the day, the  
9 document is more inculpatory than anything else because it puts  
10 Mohamad Khweis firmly within the operations and machinery of  
11 the terrorist organization. It further reinforces that he was  
12 a paid member of ISIS.

13                  The defendant argues that there is no designation for  
14 him, but there is designation for other individuals on the  
15 document. Your Honor, what that shows is that Mohamad Khweis  
16 was in fact conspiring with other fighters. He's listed on a  
17 document with other fighters.

18                  He's also listed on this document, as he was on one  
19 of the documents admitted at trial, as receiving a stipend or  
20 allowance from ISIS. The notion that he was a paid member of a  
21 terrorist organization, who since 2014 has killed 9,000  
22 individuals annually, just to sit around and check things out,  
23 is preposterous.

24                  Furthermore, Your Honor, the defense just now in  
25 their argument stated that this was the primary piece of

1 evidence that the Government used to convict him. That simply  
2 is not the case and ignores the vast body of evidence developed  
3 in this case.

4 The jury saw everything from the defendant's airline  
5 records, his wireless network connection data points, Google  
6 Internet search history, DMV records, car rental records, bank  
7 records, e-mail records, social media records.

8 The fact that he stated that he wanted to be a  
9 suicide bomber was corroborated by the independent piece of  
10 evidence, his creation of the iAGreenBirdiA Twitter account  
11 while he was in Turkey even before he entered the terrorist  
12 organization. He was advertising to them, inshallah, I will  
13 become a martyr, inshallah. That is precisely the first thing  
14 that he did when he entered Syria.

15 Your Honor, we even introduced a private Twitter  
16 message to what was described to be an ISIS recruiter or  
17 facilitator that Mohamad Khweis sent while he was in Turkey  
18 seeking to enter the terrorist organization.

19 We had countless statements that were corroborated by  
20 numerous witnesses in the case regarding the role of guns,  
21 firearms within the terrorist conspiracy. You had a Kurdish  
22 Peshmerga official who came in from the battlefield, testified  
23 live in this courtroom and said, the area in which the  
24 defendant was coming from was all ISIS-controlled territory and  
25 it was filled with ISIS snipers.

1                   So we don't think that there is anything in this  
2 document that would undermine the confidence of the jury's  
3 verdict.

4                   Moreover, as Your Honor stated, the defense did try  
5 to impeach the document. They did it on cross-examination,  
6 they did it during closing argument, and they argued, which is  
7 what they would argue with this document, that we don't know  
8 who ascribed any of these entries, particularly the fighter  
9 notation.

10                  But again, as the defendant concedes, this newly-  
11 discovered document was subsequent to the document that was  
12 introduced at trial. The document introduced at trial we  
13 presented as his intake forms. That was corroborated through  
14 the testimony of the agents who said he went through this  
15 process when he arrived. He was asked questions. The answers  
16 to those questions were listed on that document, as well as in  
17 the testimony of the defendant's statements.

18                  And in addition to that, the document had a date of  
19 January of 2016. It's simply incorrect to suggest, as the  
20 defendant did in his filing, that the Government presented Mr.  
21 Khweis as its primary argument that he was a fighter.

22                  I went through the transcript, Your Honor, and just a  
23 few examples. Page 561, Agent Czekala testified that Mosul,  
24 Iraq, it was at this safe house where he was instructed that  
25 the next step for him would be military training and that he

1 eventually would be a fighter for ISIS.

2 The next page, after he is instructed that he  
3 eventually would receive military training and become a fighter  
4 for ISIS, he was told that he should have been assigned to an  
5 ISIS household that had -- that was full of English speakers.

6 Page 566, at one point he was approached and Mohamad  
7 Khweis asked an ISIS official, why am I waiting? Why am I not  
8 undergoing military training? And the ISIS official reassured  
9 him and tried to comfort him and said that this happens. He  
10 gave an example of another ISIS fighter that had waited a long  
11 time before undergoing military training. And that the ISIS  
12 official reiterated that he would be a fighter after he  
13 received that training.

14 There was also testimony which indicated that the  
15 defendant was frustrated that he hadn't yet received the  
16 military training.

17 And so, the fact that this document and these entries  
18 were subsequent to the intake documents actually corroborates  
19 the testimony at trial. And, therefore, in the Chavis test, it  
20 also doesn't satisfy the merely impeaching or cumulative prong  
21 in favor of the defense.

22 The defense impeached the documents that were  
23 introduced at trial, and this document would have merely  
24 corroborated the testimony that the agents gave.

25 And so for those reasons, Your Honor, we don't

1 believe that the defense is entitled a new trial, and we ask  
2 that you rule such.

3 Thank you.

4 THE COURT: All right, thank you.

5 Mr. Zwerling.

6 MR. ZWERLING: May I respond just briefly, Your  
7 Honor?

8 THE COURT: Yes, sir.

9 MR. ZWERLING: Judge, this case is an unusual case in  
10 many respects. One of them is that the vast majority of the  
11 Government's case against Mr. Khweis comes from the mouth of  
12 Mr. Khweis. The agents testify, he told us this, he told us  
13 that, he told us the other. Virtually everything that the  
14 Government has just recited to you was an agent testifying what  
15 Mr. Khweis told them.

16 And what I find troubling is that when Mr. Khweis  
17 says, I was asked upon intake whether I would be willing to be  
18 a suicide bomber, I said, yes. He told them that. He said,  
19 but I didn't mean it. I was afraid to say no.

20 Now, you remember that he came over to Syria and ISIS  
21 in a somewhat unusual fashion because he didn't have a sponsor.  
22 They didn't know him from a hole in the wall. He was not  
23 trusted. And if they thought he was a spy, he told the  
24 Government, and the Government has confirmed, the way they  
25 treat spies is not very nice, they kill them, and in not nice

1 ways. So he didn't want to run into that.

2                   Not one time since this case started, except on  
3 cross-examination, has the Government, whenever they talk about  
4 the statement by Mr. Khweis that he was asked to be a suicide  
5 bomber and said yes, ever puts in the qualifying part of the  
6 statement that he made. And I just don't think -- that just  
7 strikes me the wrong way.

8                   And I recall him wanting to go to meet up with the  
9 English speakers, not necessarily the fighters. There were  
10 fighters everywhere. I never once heard him say, I wanted to  
11 get training. He said he was told by other people that he  
12 would get training, that that's what would eventually happen.

13                   Now, as far as the significance of this document, Mr.  
14 Khweis testified in this case. Now, he told the Government,  
15 and it came out to the jury, that when he was brought to the  
16 first house in Raqqah, they took everybody, they took blood,  
17 and they took information, they took their documents. And  
18 there was one guy on a computer and one guy filling out a form  
19 by hand. And he told them what he was asked and what his  
20 answers were.

21                   They had never heard of this before. Was he telling  
22 the truth? Well, it turns out months later after his  
23 statements, part of Mosul is liberated and lo and behold they  
24 find the computer entries in this document that was introduced,  
25 and it had everything that he told them.

1                   The one thing on that document that he didn't tell  
2 them about was that he was designated a fighter. And he  
3 testified to the jury, I never said that. And of course, there  
4 is the document. If nothing else, that showed he was a liar to  
5 the jury. His credibility was severely impacted. Our ability  
6 to argue that his story was credible was severely impacted by  
7 that document with that entry.

8                   Then lo and behold, the next two months the similar  
9 document does not have him listed as a fighter. Which is an  
10 indication, certainly a good argument that the first one was a  
11 mistake. Okay. We didn't have that available to us to argue  
12 to the jury. And had we, maybe the jury would have found the  
13 important parts of his testimony credible, not the  
14 Bluebird/GreenBird part.

15                   But even with the GreenBird, which he admitted to at  
16 one point in the trial before, I will get into in sentencing,  
17 before the next time he said no, it was at the Twitter bird  
18 that was blue that made me think of the GreenBird.

19                   He explained, and the Government has not ever told  
20 you, although you have heard it, how he changed his handle to  
21 GreenBird, iAGreenBirdiA. His initial one was fearislove.

22                   So he is there in Turkey. He is trying -- and he  
23 admits, he is trying to get someone to take him into ISIS. And  
24 he is posting on his Twitter account fearislove, you know, that  
25 he wants to go. And he gets no response.

1                   He says, well, why am I not getting a response?  
2 Well, let me try this. You know, iAGreenBirdiA, you know, God  
3 willing, let the GreenBird take my soul to heaven. And he gets  
4 responses.

5                   Does that indicate that he wanted to be a suicide  
6 bomber by itself? I don't think so.

7                   So the point I am trying to make for the significance  
8 of this new document is not only does it diminish the power of  
9 the Government's argument about the existence of the term  
10 "fighter" there, but these new documents would strengthen our  
11 argument that the important parts of his testimony were  
12 credible. That he didn't go there to be a fighter. He went  
13 there for naive reasons.

14                  And whether it is to be like an ambulance ET in  
15 helping people who need to get to the hospital or helping to  
16 feed people, that could easily go towards whether he should be  
17 held accountable under Pinkerton for possession of the  
18 firearms.

19                  Judge, I have not seen any other cases, maybe there  
20 are some, of people who have traveled or wanted to travel who  
21 have ever been convicted under Pinkerton. This is a unique  
22 thing for me. And I think it is a stretch, but I think if in  
23 fact he went there to be a fighter, it would be less of a  
24 stretch than if he had not.

25                  And for those reasons, we ask you to grant the Rule

1 33, especially on the gun count.

2 THE COURT: All right. Well, I am going to deny the  
3 Rule 33 motion. You know, he is not charged with providing  
4 material support by being a fighter. It was by providing  
5 support as personnel or services.

6 I think that the power of the initial documents was  
7 corroboration that he in fact joined ISIS, which he was  
8 ambivalent about certainly at trial. But with the FBI, even  
9 when he was being interviewed, and that the import of those  
10 documents was that they had him in their system as having  
11 registered and become a member.

12 And the real power of the testimony was in the  
13 actions that he was responsible for and how he deliberated on  
14 which terrorist organization to join. How he very cleverly got  
15 to Syria. How he wanted almost desperately to get to Syria.  
16 How he modified his plans based on, as you said, whether he got  
17 responses from ISIL to some of these social media messages or  
18 not, how he traveled there, and then was in the process of  
19 being trained to be a fighter.

20 And I think that was the testimony loud and clear, is  
21 that he hadn't been out in the field and wasn't going out into  
22 the field until he had had the training, which had not included  
23 military training to date. And the jury heard that loud and  
24 clear.

25 So these new documents just, one, corroborate once

1 again that he actually was being paid in February and March, or  
2 January and February by ISIL. That he still was a member of  
3 ISIL. And the fact that it does not designate him as a fighter  
4 in those documents, I don't think is significant to the proof  
5 in the charge or the elements of the offenses.

6                   And as pointed out in the United States versus Chavis  
7 test, at least the fifth prong is that where new evidence is  
8 presented, that it has to rise to a level that it would  
9 probably result in an acquittal in a new trial. And I don't  
10 think that this additional evidence comes close to that for the  
11 reasons I have stated and those that Mr. Parekh has identified.  
12 Whether it's the fact that he agreed initially to be a suicide  
13 bomber, albeit not sincerely, and the rest of the information  
14 that I have given.

15                   And I have looked closely again at Count 3 and the  
16 Pinkerton theory and the Government's evidence on the Pinkerton  
17 theory. And it was consistent not with him being a fighter,  
18 because there is no evidence that he had become a fighter at  
19 the time he left, but instead that he had joined a terrorist  
20 organization where fighting was the first and foremost goal of  
21 the organization to, one, create a caliphate; and, two, resist  
22 and commit jihad against the United States and other countries.

23                   So I don't think it changes the evidence in Count 3  
24 to the extent that you believe.

25                   So your exception is noted, of course. And I will

1 deny the motion for a new trial based on the newly discovered  
2 evidence.

3 All right, let's go on to the Rule 29. Ms.  
4 Carmichael.

5 MS. CARMICHAEL: Thank you, Your Honor.

6 I would like to start with Count 3 on the Rule 29.  
7 In the brief I have discussed four reasons why the evidence was  
8 insufficient as a matter of fact and law. Today I would like  
9 to discuss two of those reasons.

10 The first, that the firearm must be used to further  
11 the specific predicate offense. And second, being that it must  
12 be a real firearm by statute.

13 As Your Honor just discussed, the Government  
14 proceeded on Count 3 on a Pinkerton theory of liability. Your  
15 Honor noted at the time that it was pure speculation as to a  
16 substantive offense and, therefore, the Government was only  
17 permitted to proceed through co-conspirator arguments.

18 The Government essentially at trial argued that ISIS  
19 uses firearms to commit violent acts. Mr. Khweis knew that  
20 ISIS uses firearms to commit violent acts. Mr. Khweis  
21 conspired to provide material support for ISIS. And,  
22 therefore, he is responsible for his co-conspirators caring  
23 firearms in furtherance of a crime of violence.

24 Your Honor, the problem with this theory and the  
25 problem with the evidence that was presented at trial with

1 respect to Count 3 is that Pinkerton liability depends on a  
2 specific predicate offense, not simply that ISIS is generally a  
3 violent organization that generally commits acts of violence.

4                   And in this case, the Government did specify a  
5 predicate offense in the indictment. Interestingly, the  
6 Government specified that predicate offense as the conspiracy  
7 charge, the conspiracy to provide material support.

8                   As Your Honor knows, the conspiracy offense is the  
9 agreement to violate the law. The subsequent acts taken after  
10 that point are not relevant with respect to the conspiracy  
11 charge. And as the Government often argues at trial, the crime  
12 is complete once the agreement is made.

13                   Therefore, for Mr. Khweis, the Government needed to  
14 show that a firearm furthered the formation of this agreement  
15 to provide material support.

16                   And, Your Honor, the Government gave examples of the  
17 formation of this agreement in its closing argument. The  
18 Government discussed the agreement to get in the taxicab, the  
19 agreement to have blood drawn. And in each of these examples  
20 and through the testimony elicited at trial, the Government was  
21 very adamant and sure to point out that a firearm did not  
22 further the formation of that agreement.

23                   I think one of the questions was, well, no one put a  
24 gun to your head and said, get in the taxicab. Therefore, Your  
25 Honor, we submit that a firearm simply did not further this

1 specific predicate offense.

2                   One of the reasons I think that this is so troubling,  
3 that this type of liability with this specific predicate  
4 offense is so troubling is that it makes it so that every  
5 material support case, for example, someone buying a gift card  
6 for ISIS sitting in their parents' basement at their home in  
7 the U.S., could be liable under this theory of a 924(c) charge.  
8 And, Your Honor, that simply cannot be what the statute was  
9 contemplating at the time that it was written.

10                  I think had the Government charged the actual  
11 substantive offense of providing material support -- and of  
12 course, we would still argue that it did not satisfy that, but  
13 I think the Government may be a bit closer if it had pled the  
14 substantive material support as a predicate offense rather than  
15 the formation of an agreement.

16                  And, therefore, Your Honor, we believe that the  
17 evidence is insufficient on the Pinkerton theory.

18                  With respect to the 924(c) charge and the fact that  
19 the firearm in this case does not meet a statutory definition  
20 of a firearm. Your Honor, it's the Government's burden to  
21 prove that the firearm meets the statutory definition of a  
22 firearm.

23                  And I would like to first point out that we don't  
24 even know which firearm we're talking about here. It makes the  
25 entire analysis elusive. We don't know if it's from the time

1 he got there or if it's from the time he left. I mean, we have  
2 no idea what firearm we're even talking is an issue here.

3 And while an expert is not required to show that the  
4 firearm is operable or readily convertible to operable, the  
5 evidence and the burden still requires something more than an  
6 individual just saying the word "gun" or the word "firearm,"  
7 which is almost all that we have in this case.

8 The other cases in which expert testimony was not  
9 elicited at trial, those witnesses still testified to a  
10 description of the firearm which would have led a trier of fact  
11 to find that it was in fact a firearm.

12 Now, Your Honor, just to be clear, we are not  
13 alleging that ISIS uses toy guns or fake guns, Your Honor. But  
14 we are saying that in this case, one, we don't know which gun  
15 we're talking about; and, two, that it wouldn't be -- it  
16 wouldn't be far-fetched to think that whatever gun we are  
17 talking about could have been some relic left over from the  
18 Soviet era that somebody carries around to make it look like a  
19 gun but has actually no hope of functioning at all.

20 So for those reasons, we submit that Count 3 cannot  
21 stand because the evidence was insufficient as a matter of law  
22 and fact, as well as the other reasons that I submitted in my  
23 brief.

24 With respect to Count 1 and 2, Your Honor, I think at  
25 the outset -- well, first of all, we submit that the evidence

1 was insufficient on the material support charge and the  
2 conspiracy to provide material support.

3 I think that one of the glaring voids in this case is  
4 the absolute absence of any type of social media postings, text  
5 messages, e-mails, anything where Mr. Khweis espouses ISIS  
6 ideology, says that he agrees with ISIS ideology, encourages  
7 anyone to join ISIS, any of that. There is none of that  
8 leading up to his travel, and there is none of that while he is  
9 in ISIS territory.

10 And as a result, Your Honor, we submit that the  
11 Government failed to show that Mr. Khweis provided material  
12 support to a foreign terrorist organization rather than an  
13 individual who happens to be a member of a foreign terrorist  
14 organization.

15 The courts have been clear that the defendant must  
16 act with knowledge that his support would be used to further  
17 the terrorist organization's activities and not just the  
18 personal interests of its members.

19 There were examples in this case of Mr. Khweis buying  
20 food, or bringing food, or perhaps cleaning, and all of those  
21 acts could have been taken simply to help a person who happens  
22 to be a member of a terrorist organization rather than showing  
23 an intent to actually support a terrorist organization's goals.

24 In addition, providing medicine would be exempt under  
25 the statute.

1                   With respect to the personnel, Your Honor, we submit  
2 that the evidence was insufficient on this as well because the  
3 case law is clear that Mr. Khweis must have acted as personnel  
4 under the direction and control and at the will of the foreign  
5 terrorist organization, and that the record does not establish  
6 that beyond a reasonable doubt.

7                   We did not hear testimony that Mr. Khweis purchased  
8 any food or cleaned anything at the direction or command of  
9 another member of the foreign terrorist organization. And  
10 there was no testimony of an employee or employer-like  
11 relationship.

12                  And finally, Your Honor, I would just like to  
13 conclude on the Rule 29 that Mr. Khweis when he was interviewed  
14 by the agents, he made a statement that he wanted to be able to  
15 tell his kids and his grandkids about his travel. That  
16 indicates that Mr. Khweis did not wish to be a martyr. He did  
17 not wish to be a suicide bomber. And for some reason, that  
18 particular statement is not credited nearly as much or even  
19 ever mentioned even though it is a statement that he made to  
20 the agents.

21                  We see that -- if Mr. Khweis' statements are going to  
22 be -- to the agents are going to be credited to the degree that  
23 the Government wants them to be credited, particularly the  
24 suicide bomber, which we continue to maintain they are taking  
25 out of context, we think that the statement about his kids and

1 his grandkids should be given equal weight.

2 THE COURT: All right, thank you.

3 Does the Government want to respond?

4 MR. PAREKH: Thank you, Your Honor.

5 As the evidence in this trial demonstrated, firearms  
6 were abundant and essential for the operation of the ISIS  
7 criminal conspiracy that the defendant deliberately joined.

8 The defense's argument is that Mohamad Khweis  
9 conspired at one moment in time and that the conspiracy didn't  
10 continue. But that flies in the face of the indictment. The  
11 indictment reads: Beginning in at least December 2015 and  
12 continuing thereafter up to and including March 14, 2016,  
13 Mohamad Khweis did knowingly conspire with others to provide  
14 material support or resources in the form of personnel or  
15 services.

16 The conspiracy, Your Honor, that we allege was broad,  
17 it was sweeping. This is a case that the defendant actually  
18 made it to ISIS. This is not a situation where he conspired to  
19 join the organization and was just in the United States or in  
20 Turkey. He actually made it.

21 And so, to state that somehow Pinkerton liability  
22 would not extend to the acts of his co-conspirators, goes  
23 against the black letter law. Pinkerton liability states that  
24 so long as a partnership in crime continues, the partners act  
25 for each other in carrying it forward. That's been reaffirmed

1 many times by our circuit.

2                   And the case here, Your Honor, is that in order to  
3 even join the conspiracy, the defendant needed a firearm to get  
4 him into ISIS. So even using the defense's cramped and  
5 incorrect interpretation of the law, the firearm actually did  
6 further advance or promote Mr. Khweis' conspiracy.

7                   On cross-examination I asked him whether he knew that  
8 the border to Syria was closed? And he said he did. He said  
9 that he needed someone to help him get across the border. And  
10 he was actually transported to the first safe house in Syria in  
11 an armed ISIS vehicle.

12                   So in order to even agree to provide himself to the  
13 organization and to get into the organization, a firearm  
14 assisted him, and in fact was the means by which he was able to  
15 get into the organization.

16                   Also, Your Honor, the defendant knew that firearms  
17 were present even before he traveled to Syria. The jury saw  
18 countless images on his phone of ISIS members with firearms,  
19 ISIS fighters, individuals shooting guns. Those were all  
20 images, many of which had dates on December 24, 2015, and many  
21 of which were images that the defendant stored, downloaded on  
22 his phone even before he joined ISIS.

23                   And so, he didn't go in with this eyes closed, Your  
24 Honor. He knew that ISIS uses firearms. He knew what the  
25 organization uses in furtherance of its criminal conspiracy.

1                   And what the defense also leaves out, Your Honor, is  
2 that the jury was able to find a guilty verdict on Count 3  
3 using two different theories. It wasn't just possession in  
4 furtherance of. We also charged in the indictment, and as Your  
5 Honor instructed, that his co-conspirators could have also been  
6 using or carrying firearms during and in relation to a crime of  
7 violence.

8                   And in relation to, the jury is instructed that a  
9 firearm is carried in relation to a crime of violence if it has  
10 some purpose or effect with respect to the crime, and if its  
11 presence was not the result of accident or coincidence. The  
12 firearm must facilitate or potentially facilitate the crime.

13                   Your Honor, what is unique about this case is that  
14 the defendant actually wanted to go and did go to a war zone to  
15 join ISIS. He could have stayed behind in the United States  
16 and provided support to ISIS from the United States.

17                   Clearly we know from the evidence that he was adept  
18 at using electronic devices. He was adept at using encrypted  
19 messaging applications. He could have told the ISIS  
20 recruiters, what do you need me to do from here? I live in the  
21 Alexandria, Virginia area. I support ISIS. I'm willing to do  
22 what it takes.

23                   But he wanted to go to a war zone where firearms are  
24 essential to the existence of the organization. The  
25 organization would not exist in Syria and Iraq if it wasn't for

1 firearms.

2 And in fact, the testimony in this trial was filled  
3 with evidence that firearms were being used. The Peshmerga  
4 soldier said that ISIS snipers were in the area where the  
5 defendant was captured.

6 Kurdish CTD Official No. 1 said that they were living  
7 in a state of war, and that Mosul is being guarded by armed  
8 ISIS members.

9 The defendant himself said that ISIS members were  
10 guarding checkpoints in cities that ISIS was controlling.

11 He said before he left, contrary to what the defense  
12 said -- and I would be happy to provide the transcript cite.  
13 On cross-examination I said: You knew that ISIS wanted to  
14 attack and destroy America before you decided to travel to  
15 ISIS-controlled territory? And he said: Yes.

16 It's in the transcript. He said it under oath. And  
17 so, the notion that he didn't support violent ideology is just  
18 belied by the facts.

19 And the caliphate, not only did he say that he wanted  
20 to see the caliphate, but he said that he wanted to be a part  
21 of it. He admitted to the FBI that he wanted to see the  
22 caliphate expand, and that he knew that the caliphate expands  
23 by violence.

24 The notion that somehow firearms didn't play a role  
25 in doing so is just not consistent with the testimony at trial,

1 including from the defendant himself.

2                   And so, for those reasons, Your Honor -- and I should  
3 note that during and in relation to -- you know, one of the  
4 cases the defense cites is the Khan case, Judge Brinkema's  
5 opinion. And Her Honor writes in that opinion that the during  
6 and in relation to standard is actually lower. In the opinion  
7 she says that the in furtherance of standard was a higher  
8 standard than during and in relation to. And she cites to the  
9 actual House Congressional Report from October 24, 1997.

10                  And so, there are multiple theories of liability  
11 here, Your Honor.

12                  Now, to go to the point where the defense claims that  
13 the firearms didn't further or advance the conspiracy. Just to  
14 name a few examples of that, Your Honor. I have already talked  
15 about how the defendant was transported to an ISIS safe house  
16 in a vehicle that was armed with an ISIS member.

17                  While the defendant was residing in ISIS safe houses,  
18 he was being guarded and protected by armed ISIS members.  
19 Number one, a safe house isn't going to be very safe if it's  
20 not being guarded.

21                  Number two, in order for him to receive his training,  
22 his religious indoctrination, to provide services to the  
23 organization, he needed to be kept alive.

24                  In fact, this is an organization, Your Honor, as the  
25 testimony at trial showed, the defendant himself said that, you

1 know, they told me to put my phone in airplane mode and to take  
2 out the batteries because they were worried about air strikes.

3 And so, the notion that this is an organization that  
4 is carrying around replica firearms when they're worried about  
5 air strikes, is just absurd, Your Honor. And we ask that the  
6 Court not credit that argument.

7 Additionally, the evidence was that some of the ISIS  
8 recruits that underwent ISIS-directed religious training with  
9 the defendant were tasked with armed guard duty at checkpoints  
10 to control those checkpoints.

11 The defendant received an inner workings view of this  
12 organization. He wasn't just kept in one safe house. He was  
13 shuttled across multiple safe houses in two different countries  
14 whereby the organization opened it up its entire criminal  
15 enterprise and exposed this defendant to the inner workings of  
16 the organization.

17 And what that included, Your Honor, was the defendant  
18 himself stated there were weapons everywhere. There were  
19 weapons at every safe house. In fact, he said that when he  
20 entered the first safe house, he specifically indicated that  
21 there was a rifle there. He didn't just say firearm. He  
22 identified it as a rifle.

23 He also said that there were so many weapons laying  
24 around, that I had to move them out of the way. I had to  
25 organize them. That's also in the transcript.

1                   And so, again, this argument that his co-conspirators  
2 weren't using firearms or somehow that the firearms were  
3 replicas or not real firearms, is just belied by the evidence.  
4 And the jury is allowed to reasonably infer based on the  
5 testimony, based on the images on his phone, that these were in  
6 fact real firearms.

7                   In fact, Your Honor, there may not be another  
8 defendant in this country who knows firearms and what types of  
9 firearms ISIS uses better than Mohamad Khweis. He was there  
10 for two-and-a-half months. He is the only defendant, the only  
11 individual to date to face a jury of his peers after  
12 successfully joining ISIS in ISIS-controlled territory.

13                   He didn't just see one firearm on one occasion, he  
14 constantly saw firearms over the course of two-and-a-half  
15 months. And he said not just to the agents during interviews  
16 in Iraq, but also on the stand he testified that there were  
17 firearms, that there were firearms everywhere.

18                   And so, his extrajudicial admissions were  
19 corroborated by under oath testimony, as well as the testimony  
20 of the Peshmerga soldier, CTD Official No. 1, and the agents.

21                   Additionally, what the defense leaves out is that he  
22 had a video on his phone. The video that was played at trial,  
23 it was a portion of the video. And Special Agents Lamb and  
24 Czekala specifically identified that this was an ISIS video,  
25 there are ISIS members in the video, ISIS flags in the

1 background, and they are holding up AK-47s and some variant of  
2 a rifle. These are specific types of firearms that are being  
3 identified.

4 And what also came out at trial is that the defendant  
5 stated to the agents that that video was sent to me by one of  
6 my fellow ISIS associates who claimed to be in the footage of  
7 the video.

8 The defendant is residing with ISIS fighters  
9 throughout his entire time there. In fact, he says that  
10 another fellow American recruit was receiving firearms  
11 training. This person was training or had been trained to  
12 conduct an attack back into the United States, and part of that  
13 training included shooting.

14 So, Your Honor, again, the argument that these  
15 weren't real firearms or that firearms weren't integral to the  
16 conspiracy, is just not shown by the evidence.

17 Now, to go to the defendant's last argument on  
18 sufficiency. Your Honor, I think the best way to describe this  
19 is that the crimes to which the defendant were convicted,  
20 particularly Counts 1 and 2, are simply not a 24-hour window of  
21 catastrophically poor judgment or crimes of impulse. These are  
22 crimes emblematic of lawlessness and arrogance.

23 And the evidence showed not just through his own  
24 statements, but through documentary and electronic evidence,  
25 that Mohamad Khweis acted deliberately, consciously, and in a

1 calculated manner to provide -- conspire to provide material  
2 support to ISIS.

3 Again, the defense claimed just now in their argument  
4 that there is nothing to indicate that he supported violent  
5 jihad. Again, that is not in the statute. The elements are  
6 very clear.

7 But even assuming, *arguendo*, that argument is valid,  
8 there is testimony at trial, page 540 of the transcript, Agent  
9 Czekala testified that the defendant added that ISIS and other  
10 terrorist organizations frequently use this term, referring to  
11 the GreenBird account that he created, to show their support  
12 for violent jihad, and particularly suicide operations and to  
13 become a martyr.

14 He created that account before he joined the  
15 organization. It evidences his intent. He clearly was  
16 desperate to get into the organization. He wanted to show his  
17 bona fides. And he knew exactly what creating that account  
18 would do.

19 And so, we do think that that is corroboration for  
20 his statement that, yes, he wants to be a suicide bomber.

21 The arguments that the defense made were capably made  
22 to the jury, and the jury was allowed to believe one version of  
23 the evidence over the other. They received the full story.  
24 And what they saw is not just the defendant's statements, they  
25 saw the defendant making his way to ISIS territory by leaving

1 his family behind, by quitting his job, by selling his car, and  
2 disposing of his assets.

3 In fact, Your Honor will recall that he admitted on  
4 cross-examination that he booked another flight while he was in  
5 Turkey. And so, the jury saw evidence of that plane ticket.  
6 He had a way to go home. On December 22 he booked a flight,  
7 and the next day he could have gotten on that flight and flown  
8 back from Turkey to the United States.

9 Now, we may not be here if he had made that decision,  
10 but that's not what he wanted to do. He wanted to engage in  
11 operational trade craft. He booked a ticket that six days  
12 later got him back to Turkey if he so wanted to or if he had to  
13 fly back. He said, yes, I could have gone home, but I decided  
14 to go to ISIS.

15 All of that was independent of his confession or his  
16 admissions.

17 The jury saw evidence also that he had closed his  
18 online accounts. They saw e-mail records. They saw that he  
19 had deleted specific portions of his Internet history. Again,  
20 this is evidence from his phone separate and apart from his  
21 statements to the FBI. There were some Google searches or  
22 Internet searches that he kept, others that he deleted,  
23 including deletions where he looked up individuals associated  
24 with jihad as Agent Lamb testified at the trial.

25 So, Your Honor, for all those reasons, we would ask

1 that you deny the defense's Rule 29 and 33 motions.

2 Thank you.

3 THE COURT: All right, thank you.

4 MS. CARMICHAEL: Your Honor, may I respond briefly?

5 THE COURT: Yes.

6 MS. CARMICHAEL: Your Honor, the Government says that  
7 the firearms were essential to the existence of ISIS, and talks  
8 about guns being everywhere, guns on the couch, guns in the  
9 safe houses. Your Honor, that is not a 924(c) charge. A  
10 924(c) charge is a specific gun used in furtherance of a  
11 specific -- or during and in relation to a specific predicate  
12 offense.

13 Guns in videos, or guns in Internet history, or any  
14 other groups of firearms that we're talking about is not enough  
15 to have sufficient evidence on a 924(c) charge. We need to  
16 know what gun was used in furtherance of what specific  
17 predicate offense, first.

18 Secondly, Your Honor, the examples that the  
19 Government provided of the predicate offense, the gun being  
20 used in furtherance of the predicate offense, the examples were  
21 a gun in a taxi and Mr. Khweis residing in a safe house. Your  
22 Honor, these are examples -- residing in a safe house and going  
23 in a taxi are examples of the allegations of the substantive  
24 material support offense.

25 They are not examples of the formation of the

1 agreement, which is the conspiracy offense. And I think it's  
2 clear that a gun was not used to further or during and in  
3 relation to the formation of that agreement.

4 If the Government wanted to argue those examples, the  
5 Government should have charged the substantive material support  
6 offense as the predicate.

7 And finally, Your Honor, I would just like the Court  
8 to note that mere membership or association with ISIS is not  
9 enough to overcome -- well, first of all, that is a First  
10 Amendment right. And it's not enough to overcome the high  
11 burden that the Government has when proving material support.

12 THE COURT: Okay, thank you.

13 Well, we visited these issues at the end of the  
14 Government's case, and I found then and I find now that it's  
15 proper for the Government to tie the Count 3 firearm count to  
16 the conspiracy charge. That you are narrowly identifying the  
17 elements necessary to prove the conspiracy charge. But I also  
18 believe the case law supports, and certainly something the  
19 Fourth Circuit will look at, is that the overt acts in  
20 furtherance of that conspiracy, and specifically to the  
21 firearms, are also proper for the jury to consider in Count 3  
22 under the Pinkerton theory.

23 And that for those reasons and the ones cited  
24 previously, and I stand by them today, I find that Count 3 is  
25 supported by the evidence. The jury considered the arguments.

1 And where there were credibility issues, they came down and  
2 found that the Government had proven its case beyond a  
3 reasonable doubt. And I think the instructions that they had  
4 represent the case law as it stands today.

5 And as to Counts 1 and 2, I think the evidence was  
6 overwhelming that Mr. Khweis very carefully and deliberately  
7 chose to join ISIL. That he made his arrangements. That he  
8 was sophisticated in doing so. And the fact that he didn't  
9 advocate for ISIL prior to leaving was I think a decision he  
10 made that he realized it would draw red flags and he never  
11 would get there, and he wanted to.

12 So the jury certainly could have found that from the  
13 evidence and otherwise his intent, those were issues that the  
14 jury considered.

15 I think the elements of the offenses in 1 and 2 were  
16 properly relayed to the jury, and that they found Mr. Khweis  
17 guilty beyond a reasonable doubt. And I think that there is  
18 support, evidentiary support for each of the elements of the  
19 offenses and each of the offenses.

20 So I am going to deny the Rule 29 motion. And again,  
21 your exception is noted to my rulings.

22 All right. Let's go -- there is a forfeiture motion  
23 as well. Do you want to address that now or not?

24 MR. PAREKH: Your Honor, I believe Your Honor held  
25 the forfeiture hearing on July 28 and issued a preliminary

1 hearing order of forfeiture on August 1, 2017.

2 THE COURT: Right.

3 MR. PAREKH: So we would just ask in connection with  
4 any sentence, that forfeiture be pronounced as part of the  
5 defendant's sentence.

6 THE COURT: Okay. I didn't know whether separate  
7 argument was necessary at this time.

8 All right, let's go on to the sentencing then and the  
9 presentence report. I have read the parties' submissions, the  
10 report of Dr. Ghannam, certainly the letters in support of Mr.  
11 Khweis, and the arguments that have been made regarding whether  
12 the Sentencing Guideline calculation is correct or not.

13 Why don't I hear from Mr. Zwerling or Ms. Carmichael  
14 on the -- I think you object to a couple of the offense levels.

15 Go ahead.

16 MS. CARMICHAEL: Thank you, Your Honor. In addition  
17 to the factual objections that Mr. Khweis maintains with  
18 respect to the Government's characterization of the offense,  
19 Mr. Khweis also objects to the terrorism enhancement under  
20 3A1.4(a).

21 The Fourth Circuit has been clear in the Chandia case  
22 that it is the wrong legal standard to equate intent with  
23 knowledge on this terrorism enhancement. And that the  
24 knowledge of a foreign terrorist organization's purpose  
25 supports a material support conviction, but in order for the

1 enhancement to apply, there must be something more. There must  
2 be a specific intent regarding motive required for the  
3 enhancement.

4 If there wasn't an additional requirement, Your  
5 Honor, then this would be simply the base Offense Level and not  
6 an additional enhancement that needed to be applied.

7 As I discussed in the Rule 29 and Rule 33, the record  
8 is void of any specific intent in the form of Tweets or social  
9 media or comments agreeing with ISIS ideology. There are no  
10 texts, e-mails to this effect.

11 And, therefore, even if the Court -- well, as the  
12 Court found, that the material support conviction is supported,  
13 the lack of the specific intent and motive would preclude  
14 application of any 3A1.4 enhancement.

15 Your Honor, the Government also seeks the  
16 2M5.3(b) (1) (E) enhancement which Probation did not calculate.  
17 And we agree with the Probation officer on this point.

18 The Government argues that it should apply because  
19 Mr. Khweis would be aware of the many ways he provided material  
20 support to a group that committed violent acts.

21 Your Honor, we submit that that would apply to every  
22 single material support case. Every material support case  
23 involves providing support to a violent terrorist organization  
24 that commits violent acts because that's the definition of a  
25 foreign terrorist organization.

1                   We again submit that something additional must be  
2 present in order for this enhancement to apply. Something more  
3 like the Ferizi case where there is a specific plot or a  
4 specific attack in mind when the defendant takes action.

5                   Without that, Your Honor, there is double counting,  
6 triple conducting the same conduct over and over and over  
7 again. And I believe that the meaning would be lost if it were  
8 applied in this case.

9                   And finally, Your Honor, with respect to the  
10 obstruction enhancement, I would only like to mention that,  
11 simply because the Probation officer did not indicate the fact  
12 of the destruction of computers and cell phones as a reason to  
13 support the obstruction enhancement. And we agree with that.  
14 We don't believe that that should support an obstruction  
15 enhancement because he was not under investigation at that time  
16 and had no reason to believe that that would be the case.

17                   I only mention that because the Government includes  
18 it in its sentencing brief.

19                   Thank you.

20                   THE COURT: All right. Thank you, Ms. Carmichael.

21                   MR. FITZPATRICK: Your Honor, with respect to --  
22 well, let's go in order.

23                   With respect to the 2M5.3, Your Honor, with all due  
24 respect to Ms. Blanchard and Ms. Marden, who prepared this  
25 report -- they are two of the best in the business. So this

1 isn't directed at them. We just respectfully disagree with  
2 them.

3 The enhancement says, at the barest level the  
4 enhancement says, if the defendant had a reason to believe that  
5 the material support is to be used to commit or assist in the  
6 commission of a violent act.

7 Here, Your Honor, we had testimony in this case, as  
8 Mr. Parekh laid out in detail, of the defendant's efforts to go  
9 in, join the organization, provide personnel and services to  
10 the organization.

11 You heard testimony at trial that the organization  
12 commits, the criminal conspiracy commits 9,000 killings a year.  
13 That is 750 a month. That is 25 per day. Certainly the  
14 defendant had a reason to believe that his services and his  
15 personnel would be used to further violent acts.

16 So, Your Honor, this is not an effort -- the  
17 Government is not trying to be gratuitous here. And we  
18 understand the argument of enough is enough. It doesn't  
19 materially change the range, it is going to be 360 months to  
20 life regardless, but we do have an obligation to address the  
21 plain language of the enhancement and apply the facts. And  
22 when you do that, it's very hard to get away from the fact that  
23 this enhancement applies.

24 And again, respectfully, we don't believe that it is  
25 a more appropriate standard, sort of gauging, well, we've

1 reached a threshold level here, and we just don't like the way  
2 this feels. More appropriate is the standard. It is simply do  
3 the facts line up with the elements. And here we would suggest  
4 that we do that overwhelmingly.

5 With respect to the terrorism enhancement, Your  
6 Honor. On the intent issue, was his conduct intended to  
7 promote the federal crime of terrorism. On the intimidate or  
8 coerce a foreign government or to retaliate against a foreign  
9 government, this defendant stated that he knew, when he  
10 departed for Syria he was aware of the November 2015 Paris  
11 attacks, which was an ISIS-claimed attack, which killed dozens  
12 and dozens of people in a nightclub in Paris, France. In fact,  
13 Your Honor, the defendant took a substantial step the day after  
14 that event to go and join ISIS.

15 With respect to once he finally gets into the  
16 machinery of the organization, you will recall the testimony in  
17 the case that when he gets to Mosul and he is undergoing his  
18 Sharia training, every sermon was concluded with "may God  
19 destroy America."

20 The clear inference from there, Your Honor, is that  
21 he certainly knew about it. And in addition, his actions  
22 demonstrate that he intended to provide his material support to  
23 that organization with those goals in mind.

24 So, Your Honor, we would ask the Court to properly  
25 find the Guidelines here at a level 42, a Criminal History

1 Category VI based on the terrorism enhancement, and the 2M5.3  
2 violent crime, violent act enhancement.

3 With respect to the obstruction, Ms. Carmichael is  
4 correct, we set forth three reasons. I am happy just to rely  
5 on two, just to move the process along.

6 The testimony from the defendant in this trial was  
7 very, very bad, it was awful. And he lied to a jury of his  
8 peers, and he lied to this Court. And that is sort of four-  
9 square obstruction of justice.

10 In addition, Your Honor, in many ways -- well, that  
11 is actually the most aggravated obstruction of justice in this  
12 case. But also, Your Honor, when he misleads Special Agent  
13 Connelly for five days and they are out there looking for this  
14 other woman and this other guy who he said he was with, that is  
15 awful conduct as well.

16 So on those two bases, Your Honor, we would ask that  
17 you impose the obstruction as well.

18 And once again, we find -- we respectfully submit the  
19 Guidelines here are a level 42 at a Criminal History Category  
20 VI.

21 Thank you.

22 THE COURT: Well, I think that the intent and motive  
23 necessary for the 3A4.1 is clearly met by the facts of the  
24 case, and the 12-point enhancement is appropriate.

25 You know, I understand the argument about the double

1 counting with 2M5.3, but the Guideline is clear that if the  
2 offense involved dangerous weapons, firearms, explosives,  
3 funds, or e-funds, or other material support or resources with  
4 the intent, knowledge, or reason to believe they are to be used  
5 to commit or assist in the commission of a violent act,  
6 increase by two levels.

7           Clearly the facts of this case fully support the  
8 two-level enhancement. Even though it may be really subsumed  
9 within 3A4.1 and also may be double counting, it's not the only  
10 instance where our Guidelines double count similar behavior.  
11 But I think it -- and that is something that I certainly look  
12 at in the 3553 factors in determining the appropriate sentence.

13           So when you're looking at the Guideline calculations  
14 themselves, and the requirements of the Guideline manual from  
15 the Sentencing Commission, it's appropriate.

16           The obstruction, there is significant evidence of the  
17 obstruction, whether it's lying to the FBI, and Mr. Khweis  
18 repeatedly coming in and saying, we need to reset, I have  
19 thought about it, and I want to tell you version B, and then  
20 version C, clearly he has obstructed the agents from day 1.

21           And as Mr. Fitzpatrick said, of course, it resulted  
22 in the FBI running around on goose chases. And his testimony  
23 in trial was absolutely incredible. And in cross-examination  
24 he made admissions, and also was clearly found to have lied on  
25 the stand by the jury in reaching the verdict that they

1 reached.

2 So I think that the level 42 is the proper Guideline  
3 calculation. It does not make a difference in the recommended  
4 sentence, which is still the same 360 months to life.

5 Are there other amendments, corrections that the  
6 Government seeks in the report?

7 MR. FITZPATRICK: No, sir. No, Your Honor.

8 THE COURT: Mr. Zwerling or Ms. Carmichael, any other  
9 corrections, additions that you want to make to the report?

10 MS. CARMICHAEL: No, Your Honor.

11 THE COURT: Mr. Khweis, have you gone over the  
12 presentence report, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Other than the amendments that your  
15 counsel have asked that we have just been talking about, any  
16 other corrections or amendments that you want made to the  
17 report at this time, sir?

18 THE DEFENDANT: No.

19 THE COURT: All right, thank you. Have a seat.

20 I will order that the report be filed without -- with  
21 the adjustment of the Guideline calculation, and otherwise  
22 filed as is.

23 All right. I have read the parties' submissions on  
24 sentencing, and I will hear anything the Government would like  
25 to say at this time.

1 MR. FITZPATRICK: Thank you very much, Your Honor.

2 Your Honor, this is a serious case. Your Honor heard  
3 a lot of evidence in this case. The jury heard a lot of  
4 evidence in this case.

5 As you know, the Government is seeking a sentence of  
6 420 months imprisonment, which equates to 35 years. We submit  
7 to Your Honor that that sentence is sufficient but not greater  
8 than necessary to address all of the statutory factors in 18  
9 U.S.C. 3553(a).

10 In addition, Your Honor, we respectfully submit that  
11 given the aggregated nature of this case, the planned and  
12 deliberate crimes committed by the defendant, that it's also a  
13 reasonable and appropriate sentence in this case.

14 Before I support that argument, Your Honor, with more  
15 detail, I would like to address at the outset there was a  
16 report submitted with the defendant's submission by Dr. Jeff  
17 Ghannam. We would ask the Court to disregard that report.

18                   Frankly, the Government has thrown that report in the  
19 proverbial trash bin. It is not worth the paper that it is  
20 written on. Respectfully, it should not have been filed in  
21 this case.

22 In February of 2017 a Federal District Court Judge in  
23 the Eastern District of New York said that Dr. Jeff Ghannam was  
24 fundamentally unreliable. I am hard pressed to find -- I  
25 cannot recall another time that I have read a Federal District

1 Court Judge's opinion where he has said an expert witness is  
2 fundamentally unreliable. They may be out there, but this was  
3 a first for me.

4 I don't want to dignify that report with much of an  
5 argument because it is an undignified report. It is not worthy  
6 of being in this courtroom.

7 With respect to the substance of the sentencing, Your  
8 Honor. We start with -- a good place to start is the Holder v.  
9 Humanitarian Law Project, which said that any provision of  
10 material support to a terrorist organization makes it more  
11 likely that a terrorist event will happen. Right? That is the  
12 basic take-away of Holder.

13 In this case you have crimes committed by this  
14 defendant in which he planned out his activities. He got  
15 smart, he got educated on how to do it, how to go beneath the  
16 radar screen and make contacts with foreign terrorists so that  
17 he could get squired into Syria and Iraq.

18 There was at a bare minimum, Your Honor, he began his  
19 planning in October of 2015. That's at a bare minimum. That's  
20 when he quit his job and started disposing of his assets.

21 So, Your Honor, when you look at the planning, the  
22 strategy that the defendant had, plus his state of mind, the  
23 images on his phone -- he clearly, Your Honor, was a  
24 radicalized individual in late 2015 and through the early part  
25 of 2016.

1                   Your Honor, the aggravating factor here, I would  
2 submit to the Court, is the unpredictability of this defendant.  
3 We've heard this morning other arguments, other matters before  
4 the Court's docket, and we heard this morning in supervised  
5 release and some other sentences, the Court asked the question,  
6 what does the future look like? What is the plan?

7                   And I would submit to Your Honor that in this case we  
8 have no idea what this defendant's plan is other than his past  
9 behavior. The best evidence of future behavior is past  
10 behavior. And this defendant was significantly radicalized in  
11 2015 and 2016.

12                  Now, can I stand or can the Government stand before  
13 you today and say to a moral certainty that this defendant  
14 sitting here today is a radicalized individual? No, I can't  
15 tell you that to a moral certainty.

16                  But I can tell you that there is radicalization  
17 within him. That we know to -- that we can say to a moral  
18 certainty because the past behavior demonstrates that.

19                  Your Honor, one element of jihadism, violent jihad,  
20 is the complete and utter rejection of social norms. And the  
21 complete and utter rejection of the rule of law. Right?

22                  So if we are looking to the future, what is the plan?  
23 Can this person be rehabilitated? I would submit to the Court  
24 that we need not go any further than this defendant's testimony  
25 on June 5 and June 6. He had 15 months to think about this.

1 He took the stand. He took an oath in a solemn proceeding, and  
2 he lied repeatedly.

3 I would submit to you, Your Honor, that that is  
4 evidence that this defendant has a radicalized mind. He does  
5 not want to abide by the norms of society. Which is, when  
6 you're asked a direct question on the stand, you've sworn to  
7 tell the truth, you tell the truth. It really is that simple.

8 And I would point to that as one piece of evidence,  
9 on top of all the other evidence that we have that this  
10 defendant is radicalized, to say that the future does not look  
11 good for this defendant in terms of his future conduct and for  
12 the future public safety of the community.

13 He has demonstrated nothing in this process that  
14 would give the Court any degree of confidence that he will be a  
15 law-abiding citizen in the future. So we have to turn to  
16 incarceration, and that supports the crux of our argument that  
17 a lengthy sentence is appropriate to specifically deter this  
18 defendant.

19 With respect to notions that this defendant was naive  
20 or impulsive, once again, the evidence just does not support  
21 that. This was a defendant who understood the mechanisms on  
22 how to get into the terrorist organization. It took a lot of  
23 planning. It took a lot of moxie, right, to get into the  
24 Islamic state.

25 So with respect to that, Your Honor, the conduct here

1 is aggravated.

2                   One other thing -- or another thing that I would like  
3 to draw to the Court's attention, it is always helpful, I would  
4 respectively submit, in the sentencing process to look at  
5 objective factors. There is some subjectivity within 3553(a),  
6 but there also is objectivity. And the objective factors here  
7 are one, the Guidelines.

8                   The Guidelines recognize, seven person Sentencing  
9 Commission, member commission, statutory authority, delegated  
10 by Congress to the Sentencing Commission. The Guidelines,  
11 although now advisory and not mandatory, they are still  
12 important. Gall and Kimbrough tell us that, the Guidelines are  
13 still important.

14                   And in this case, the Guidelines have recognized that  
15 serious punishments for serious conduct are warranted. The  
16 Guidelines in this case, it's an objective measure, recommend a  
17 360-month to life sentence.

18                   The other objective measurement, Your Honor, would be  
19 comparable cases. The comparable cases that the Government  
20 would ask the Court to consider are the Pugh case, the Tairod  
21 Pugh case out of the Eastern District of New York.

22                   That case, Your Honor, the defendant received  
23 post-trial a 35-year sentence. The case is comparable to this  
24 case in that the defendant exercised in that case significant  
25 planning, clearly demonstrated his intent to go to the Islamic

1 State, and then engaged in obstructive conduct after he was  
2 arrested.

3 The key difference, however, Your Honor, is that that  
4 defendant was apprehended, his plan was thwarted in Istanbul.  
5 He never made it to the United States. This defendant -- or,  
6 excuse me, never made it to the Islamic State. This defendant  
7 made it to the Islamic State.

8 So again, objectively, the Pugh case is a firm  
9 sentence based on very comparable facts that we can look at.

10 We can also look at, Your Honor, the Badawi and  
11 Elhuzayel case. Those were co-conspirators tried in the  
12 Central District of California. They each received post-trial  
13 30 years.

14 Again, their plan, and that was a two-person  
15 conspiracy in which Badawi was -- Badawi radicalized Elhuzayel,  
16 and then was getting passage for Elhuzayel into the Islamic  
17 State. They were stopped at the airport, I believe. Those two  
18 defendants received 30 years.

19 So we have the Guidelines, two very comparable and  
20 two very recent cases, that objectively lend support to the  
21 Government's position that a 35-year sentence is appropriate.

22 Your Honor, with the other factors that the Court,  
23 the Supreme Court tells us to look at, we actually -- from the  
24 Government's side, I can only speak for the Government. When  
25 the Government goes through this record, we are hard pressed to

1 find mitigation in this case. The seriousness of the offense  
2 is at the highest peak, I would submit, in crimes that are  
3 adjudicated in this court.

4 The terrorism crimes, it's generational. It goes to  
5 the existence of our values and the security of our country.  
6 They are at the highest peak of criminal cases that are heard  
7 in this court. So the seriousness of the offense is very high.

8 Promotion of the respect for the law. This defendant  
9 has demonstrated an utter disregard for the law.

10 Just punishment for the offense. The defendant  
11 himself needs to be deterred. But the appropriate message,  
12 respectfully, Your Honor, is that, I used the phrase "enough is  
13 enough" earlier when talking about the Guideline enhancement,  
14 but the appropriate message here is, others, don't do this. If  
15 you get caught, you are going to go to prison for a long time.

16 In addition, Your Honor, respectfully, we cannot  
17 create the impression that we are in any way going to enable  
18 this type of conduct.

19 And for all of those reasons, Your Honor, I believe a  
20 35-year sentence is appropriate.

21 With respect to, you know, is this an unusual case,  
22 the only reason why this is an unusual case is the fact, as Mr.  
23 Parekh has laid out in his response -- the Government's  
24 position on the motions, this defendant executed his plan to  
25 perfection. He got into the Islamic State. He was within

1       their machinery. He was within their program. He was  
2       providing himself and services to the organization. He did  
3       agree to be a suicide bomber.

4               Mr. Zwerling's argument that we have mischaracterized  
5       that is not so. He initially -- on subsequent days he began to  
6       walk it back, like he did frequently. I think he was clever in  
7       thinking, how am I going to minimize these things? But when he  
8       went into the Islamic State, he was asked a question and he  
9       answered it, he was going to be a suicide bomber for this  
10      organization.

11               So for all of those reasons, Your Honor, we don't  
12       see, respectfully, the Government doesn't see the mitigation in  
13       this case. There is a mountain of aggravation. And we feel  
14       that a 35-year sentence, not a 40-year sentence, not a 45-year  
15       sentence -- the Government, we conscientiously addressed the  
16       statutory admonition that the sentence should be sufficient but  
17       not greater than necessary.

18               Our position is we have got to get to sufficient  
19       first. When Mr. Parekh and I went through this calculation in  
20       consultation with our respective offices, we conscientiously  
21       came up with the number of 35, and I think that's appropriate  
22       for this case.

23               Thank you very much, Your Honor.

24               THE COURT: All right, thank you.

25               Mr. Zwerling.

1                   MR. ZWERLING: Judge, I want to -- I hadn't planned  
2 on saying this, but I want to deal with this suicide bombing  
3 thing first because I think Mr. Fitzpatrick's memory is  
4 probably better than mine, but not on one particular subject.

5                   I have a 302 from Agent Connelly dated March 13,  
6 2016. This is the first or second day of interviews. And it  
7 says: An ISIS -- he is quoting now Mr. Khweis: An ISIS leader  
8 entered the residence and inquired of each person. Khweis told  
9 him he was from America. And the leader asked if he was brave  
10 enough to be a suicide bomber. Khweis said yes, but that was  
11 not his intention.

12                  So from the very beginning, the first time he  
13 mentioned that, he explained the circumstances and what his  
14 thoughts were. It's not something he thought about later on  
15 and just added, well, I better soften that statement up.

16                  Your Honor, I'm not here to debate Mr. Khweis' guilt  
17 on these charges. He has been found by a jury to be guilty,  
18 and we accept that. But the Court knows full well that you are  
19 not only sentencing the crime, you're sentencing the person.

20                  And determining an appropriate sentence is  
21 probably -- or at least it has been told to me by many jurists,  
22 is the hardest part of being a judge. You are asked to make  
23 decisions that require you to really guess at certain things  
24 about the future, future behavior. About things that just  
25 weren't resolved. And it could go either way. This is as a

1 general rule.

2                   But I think when you look at the person, you look at  
3 the whole person. And if you examine the first 26 years of Mr.  
4 Khweis' life as set forth in the letters that were submitted by  
5 family, friends, and I think we quoted some 302s of employers  
6 and co-workers, you come away with a picture of a person who  
7 grew up in a stable, loving home. Hard working. He lived a  
8 fairly ordinary childhood.

9                   He always worked. He provided community service as  
10 he was growing up. Not only would he help take care of the  
11 elderly and do things, not for pay, but to help the community.  
12 He was generous. He was caring. He was always nonviolent.  
13 There is no violence in his background.

14                   Towards the end of high school he started  
15 experimenting with drugs and he started to drift, and  
16 eventually was using marijuana virtually every day at the time  
17 this happened, and clearly his judgment became clouded. But he  
18 has always been respectful of people, addressed people  
19 respectfully.

20                   And he was not a particularly religious person, he  
21 was very secular, surrounded himself with secular people. His  
22 parents are secular.

23                   So it is difficult to understand his travel to Syria.  
24 The record is void of what motivated him, what got him to go.  
25 And that's very curious because in these cases, that is usually

1 not the situation. There is usually a trail, Facebook entries  
2 and Twitter entries, rants and raves, and lectures. None in  
3 this case.

4 So when we look at the crime itself, we don't really  
5 know what caused him to travel to Syria. Whatever it was,  
6 whether it was actually to go and fight and die, or a sense of  
7 adventure coupled with naivete, or whatever it was, it doesn't  
8 matter in respect to whether or not he committed the crime.  
9 Going there under these circumstances makes him guilty of  
10 conspiracy and providing material support.

11 But, Judge, did he really go there to die? Did he  
12 really want to die? Is there anything that indicates this is a  
13 man who wanted to die? Is there any indication he really  
14 thought he would go to heaven? That he believed in heaven?  
15 That he believed in the 72 virgins and all of these other  
16 things? There is no evidence of that.

17 And while he was there, he did not fight. He did not  
18 do harm to another human being while he was there.

19 So while we understand under the law merely providing  
20 yourself, even as an ambulance driver to free somebody else up  
21 to be a fighter, furthers the cause and makes you guilty of  
22 this crime, there are different levels of providing material  
23 support. There are those people who supply guns, money to buy  
24 the guns. Recruit other people to go.

25 What he did is as benign as what you can do and still

1 be convicted of this crime, I submit, at least based on the  
2 evidence.

3 Now, are there reasons to think that he really did  
4 not want to die over there? Yes, there are. You look at his  
5 actions. He found out after he first arrived that if he didn't  
6 have skills -- and this is something he didn't know before he  
7 went, there is no evidence of that. That when he got there, he  
8 found out if you didn't have any skills, if you weren't a  
9 doctor or you weren't some type of a computer person, you were  
10 going to wind up getting military training and becoming a  
11 fighter.

12 And my understanding of his complaint, as he tells it  
13 to the agents -- it was not that he was wondering when he was  
14 going to be moved to military training. It was when he was  
15 going to be moved to English speakers. He was supposed to be  
16 with English speakers because he didn't speak Arabic very well.  
17 He didn't speak Russian. He didn't speak the language of a lot  
18 of the people he was thrust in with. And he was not told, go  
19 here. He was taken from one place to another. He didn't have  
20 much choice.

21 And so, are there any indications that he did not  
22 want to die? Yes. He fled. The Government in all of its  
23 pleadings and it's argument here today makes no mention of the  
24 fact that he made the decision to flee ISIS, to escape. That  
25 he didn't want to die would be consistent with fleeing and

1 surrendering to the Peshmerga.

2                   What has he done post-surrender that would indicate  
3 whether or not he is still a committed jihadist or not?

4 Whether he still wants to advance the purposes of ISIS? Well,  
5 they say he lied, and that shows he still is with ISIS.

6                   Let's examine that for a second. He shows up in  
7 Kurdistan. He was handled somewhat roughly. The Court has  
8 heard the testimony at the suppression hearing. He is taken to  
9 a prison for counterterrorism. He is housed in a prison full  
10 of suspected terrorists. And he is in the hands of  
11 interrogators like Kurdish Official No. 1.

12                  And does he want to be there? Does he want to be  
13 charged in Kurdistan with being a member of ISIS? How is he  
14 going to explain it? The initial reaction is to make up a  
15 story. Is that not natural?

16                  The next day he is seen by Agent Connelly and others,  
17 but always in the presence of the Kurds. And it takes him five  
18 days to finally get off that story as Agent Connelly develops a  
19 sense of trust and gets him to relax and open up to him.

20                  And I think Agent Connelly says on March 22, in one  
21 of his mailings: It's been a textbook case of getting a guy  
22 from a complete lie to a confession.

23                  Now, every prosecutor I know, every defense attorney  
24 I know who has had experience with defendants who become  
25 cooperators, you can't expect to get the true story the first

1 time you talk to them. You get bits and pieces. It's as you  
2 develop trust that you get more and more. And that's what  
3 happened here.

4 And by the 20th Agent Connelly says, this is the  
5 intel's job, obliterate all the lies and get him comfortable  
6 with the truth. He was convinced that he now had the truth.

7 And what did that truth consist of? It consisted of  
8 acts which would support a withdrawal from the conspiracy he  
9 entered into. He provided valuable actionable intelligence to  
10 Agent Connelly during the 11 or 12 sessions that they had  
11 together. He told him all of the machinations that he went  
12 through to get to Syria. The things that the Government  
13 acknowledges are unique or somewhat unique. He laid it out,  
14 how he did it.

15 He gave them the Twitter accounts so they could look  
16 and see what he did. And that's where the GreenBird comes into  
17 play, he told them about that. And he told them why he used  
18 it, because the original name didn't get him anywhere. And he  
19 wanted to -- he admitted he wanted to go to Syria. So that's  
20 where that came from.

21 They were able, with his help, to determine who he  
22 was speaking to, what their handle was, and what they did in  
23 order to get him into Syria.

24 He told them the route that they took. The way they  
25 were transported. Things that were said. He identified the

1 people who were members of ISIS that he saw along the route as  
2 best he could. He told them about the safe house in Raqqah, he  
3 described it as best he could, it's location and things.

4                   And he told them what happened in there. How they  
5 took his blood to see whether he had serious diseases. How he  
6 was questioned. And how they filled out these forms that he  
7 saw them doing, one on a computer and one in hand. They found  
8 that out from him.

9                   And so, it was no surprise what it was that those  
10 exhibits that came into our trial were, because he had  
11 described them to the T to the Government agents. He told  
12 them, you know, how long it was from there to the place they  
13 took him in Mosul, to the mosque that had been converted. Told  
14 them, you know, as best he could how to find it. Looked at  
15 maps. Helped them try to locate it at a time when it was  
16 important. The procedures that ISIS followed in Raqqah. The  
17 place in Tal Afar. All of the places he went, what was going  
18 on there, who he ran into.

19                   But most importantly, he provided accurate  
20 descriptions of at least four other Westerners who were being  
21 trained to come back to the United States and other  
22 jurisdictions in Western Europe to do harm. He described them  
23 well enough that within days or weeks the agents were able to  
24 come to him with photo spreads, and he was able to identify  
25 these dangers to our country, these individuals who were

1 dangerous to us and dangerous to other countries. He  
2 identified them, including the American.

3 Judge, that would qualify for withdrawal from the  
4 conspiracy, in my view. The Government has given him zero  
5 credit for any of that. Zero. You have not heard them say a  
6 word.

7 I submit that that alone is sufficient to warrant,  
8 even under 3553 in light of the fact he is not going to get a  
9 Rule 35 or a 5K, a serious departure or variance downward  
10 because it shows that he has given up the ISIS conspiracy. He  
11 has given up his commitment, to whatever extent it was, to ISIS  
12 by doing all that and by putting his life in jeopardy.

13 I mean, he has -- while he was doing this, he was  
14 being held with terrorists in a Kurdish prison. And he will be  
15 going into our prison system, and someday hopefully back to the  
16 streets as a traitor to ISIS because this is now public  
17 information. That is significant, Your Honor, in my opinion,  
18 and needs to be rewarded.

19 He offered to Agent Connolly, according to Agent  
20 Connolly, to be proactive. He was hanging to his leg when  
21 things were wrapping up with Agent Connolly. You know, I'll do  
22 anything, I'll help you get on the Internet, I'll do whatever I  
23 can to help you fight ISIS.

24 He has never withdrawn his desire to cooperate with  
25 the Government. He has just made himself not worth anything at

1 this point for future cooperation because he's gone to trial  
2 and he's lied on the stand, and we understand that. But it  
3 doesn't mean he is not willing.

4 So the decision to go to trial. It was a stupid  
5 decision, in my opinion, because he admitted to having  
6 committed the crime to the agents and even on the stand. He  
7 admitted every element of the offense.

8 What he didn't want to do, apparently, and what he  
9 didn't do and what he lied about at the trial was that he ever  
10 wanted to be labeled a terrorist or join a terrorist  
11 organization. And if you read his letter, Your Honor, to you,  
12 I think there is an insight that I didn't have until I read  
13 that letter as to what may have caused that. I think it's the  
14 shame of admitting in front of his mother that he had an evil  
15 purpose that he had joined this group. He just couldn't do it,  
16 couldn't admit he was guilty of that.

17 And his lies on the stand, as pathetic as they were,  
18 all went to his mental state, not to what he did. He never  
19 said he didn't travel. He never said he didn't wind up at the  
20 safe house. He never said he didn't provide the information.  
21 He admitted every element of this offense, Your Honor. The  
22 lies were pathetic, but they really weren't particularly  
23 material to guilt or innocence.

24 There is no excuse for lying, but the most obvious  
25 lie that he told, which I believe goes to the shame issue, is

1 at one point he admitted how he handpicked the handle  
2 iAGreenBirdiA. He told it to the agents, he told it on the  
3 stand. But then at one point with his mother sitting in the  
4 room, he couldn't repeat that information and came up with  
5 this, oh, I saw a blue bird. Okay.

6 Well, he had to know he wasn't fooling anybody who  
7 had heard the other parts of the thing. He just, I submit, now  
8 that I'm thinking about this, it was that he couldn't say it in  
9 front of his mom. That doesn't make it an excuse because he  
10 was under oath. It makes it a little less evil.

11 Since he has been in jail he has done -- and the  
12 Court has the documentation. He has gone to school. He has  
13 taken classes. He has done everything he can -- and there is  
14 ever indication he will continue -- to do things to improve  
15 himself so that someday, should he live long enough and he gets  
16 back on the streets, he can make something of himself.

17 The question I think that the Court needs to wrestle  
18 with is how dangerous is he? The whole reason, according to  
19 the case law and the history of the Guidelines as to why you  
20 are considered a Category VI, and in this case we think that  
21 overstates the situation, is because how do you reform somebody  
22 who has taken the position that God will be pleased if they  
23 kill the infidels? There is no evidence that Mr. Khweis ever  
24 took that position, ever. No evidence.

25 And the Government acknowledges that they don't know

1       whether he is going to be a danger. Err on the side of  
2       caution, I guess, is their statement.

3           But I think there are reasons to think he is no  
4       longer dangerous. There is the cooperation that he has given.  
5       The intelligence that he has given. The lying really doesn't  
6       make that different.

7           And the Government cites to these two cases, Pugh and  
8       Elhuzayel and his partner Badawi. There are differences  
9       between Mr. Khweis and those individuals, Your Honor. And I  
10      will read parts of the Government's position paper in those  
11      cases, if the Court would permit me, that point out the  
12      difference.

13           In the Pugh case -- well, first of all, let me say  
14      this. In both of those cases, the only thing that prevented  
15      those individuals from going and committing violent jihad and  
16      actually killing people or trying to kill people was the fact  
17      they were apprehended.

18           Mr. Khweis was prevented from doing it because he had  
19      a change of mind and escaped and cooperated. That's a huge  
20      difference as to future dangerousness, in my opinion.

21           The Government respectfully submits -- they write --  
22      this letter by the defendant's wife: I am a Mujahid. I am a  
23      sword against the oppressor and a shield for the oppressed. I  
24      will use my talents and skills given to me by Allah to  
25      establish and defend the Islamic State. There are only two

1 possible outcomes for me, victory or martyr. If Allah gives me  
2 a victory, we will have a home in Al-Sham. I will send for you  
3 when it is safe. You will have a nice home around believers.  
4 If I am made a martyr, we will have a mansion of undescribable  
5 beauty on a magnificent plot of land. The land under a whip is  
6 worth more than the world and all its contents. I calculated  
7 my worth in Dunya. I would usually sell myself for a thousand  
8 dollars a week, and that would be a half million dollars for  
9 ten years. If I sell myself to Allah, one night guarding the  
10 borders for the sake of Allah, it is worth more than the world  
11 and all its contents.

12 This is the last words regarding Mr. Pugh and his  
13 commitment to the ISIS organization. Yes, he will be a hard  
14 case to reform.

15 Mr. Elhuzayel is even worse. And first of all, these  
16 gentlemen not only sent themselves, but they actively recruited  
17 scores of people, or tried to, to go and fight on behalf of  
18 ISIS.

19 He encouraged nobody to go but himself.

20 Here are some quotes from the Government's pleading  
21 reciting the facts in the other case, Elhuzayel: Elhuzayel and  
22 Badawi expressed their agreement to provide fighters to ISIS  
23 and their approval of Allah and joint desire to participate in  
24 ISIS' terrorist activities. Elhuzayel asked Allah to grant him  
25 martyrdom and the success to leave the country and fight for

1 the cause.

2                   And I won't go through all of them, but here is one:  
3 ISIS is getting ready to attack Israel. This is exciting.  
4 Looking forward to see some yahoodi heads rolling or dead  
5 bodies carrying their own yahoodi heads. And Jihadi John doing  
6 this stance on them.

7                   And then he links a picture to Jihadi John  
8 decapitating victims.

9                   And then: The only thing more beautiful than rain is  
10 homosexuals being thrown off tall buildings.

11                  And he attaches a photograph of Middle Eastern  
12 looking men being thrown off the top of multistoried roofs.

13                  God is great, and may Allah grant us 72 virgins. May  
14 Allah make us among the martyrs.

15                  The evidence demonstrates that the defendant  
16 Elhuzayel has, for some time, been deeply committed to ISIL's  
17 cause and, therefore, is particularly resistant to deterrence.  
18 He pledged allegiance to ISIS in a video and to their leader.

19                  They have, obviously, multiple Internet  
20 communications and informants and undercover agents who  
21 witnessed these type of things. Judge, he got 30 years.

22                  I submit that Mr. Khweis is not -- it's not  
23 appropriate to give him a sentence anywhere near that under the  
24 circumstances.

25                  So you take -- the Government says we can't compare

1 him to individuals who have pled guilty. And pleading guilty  
2 gives you acceptance of responsibility. And going to trial and  
3 lying gives you obstruction, that is five levels. The  
4 Guidelines take care of that, really.

5 But which shows a greater level of reformation of an  
6 individual, getting caught and pleading guilty? Or  
7 surrendering, providing actionable intelligence to thwart ISIS,  
8 and going to trial and lying at trial? Compare those two. I  
9 submit the latter should be given more weight in evaluating  
10 whether they have really reformed.

11 So there should be a penalty for going to trial,  
12 there should be a penalty for lying, but not decades of  
13 punishment, Judge.

14 If he were apprehended when he was in Raqqah by our  
15 government and brought here for trial, it would be one thing  
16 because the only thing that stopped him from carrying out  
17 terrorism himself would be the intervention of the police. But  
18 that's not what happened. He fled, turned himself into the  
19 Peshmerga. He cooperated in a way that would be a withdrawal  
20 from the conspiracy. And he provided very valuable, actionable  
21 intelligence.

22 And so, in the end and in conclusion, the Government  
23 says, well, we need to send a message to people who -- young  
24 men not to go. But what about the young men who don't hear  
25 that message and do go? Most, if they go, they think they are

1 going to die. They are not concerned about doing jail time  
2 back in the States. But if they get disillusioned over there,  
3 then they will think about, well, what are my options?

4                   And we need to send them a message. If your options  
5 are, stay there, fight and die; or come back, surrender,  
6 cooperate, and go to prison for multiple decades, you're not  
7 giving them much of a choice.

8                   So I would submit that you should punish him, but it  
9 should be proportionate. You know, you can't give him as  
10 lenient a sentence as Ms. Green, who was an FBI interpreter  
11 with a top secret clearance who was working on a case involving  
12 a Syrian ISIS higher-up, went to join him, tipped him off that  
13 he was under investigation, married him, thought twice about  
14 it, and then surrendered and cooperated. And she got two  
15 years. She didn't have to go trial. She was offered a plea to  
16 false statements. That wouldn't have required him to admit he  
17 was a terrorist.

18                   So I submit, we're asking for five years. I  
19 understand the Government is asking for 35 or 45 years,  
20 whatever. The Guidelines call for 30. Your Honor, I ask you  
21 to be measured. Consider the extenuation of his individual  
22 case, the message that you will be sending, and sentence him to  
23 no more than is absolutely required under the facts of this  
24 case.

25                   And whatever that is, Your Honor, we would ask you to

1 give him credit for the time he has served in Iraq from the day  
2 that the Government, our Government started interrogating him,  
3 which is March 16, until his formal surrender to the U.S. on  
4 June 8.

5 And if you can't give him credit for it, then deduct  
6 it from the sentence because clearly he was being held for this  
7 offense, whether it was in Kurdistan or here.

8 We ask you, if he is eligible, to designate  
9 Cumberland because it is close to his home, and recommend him  
10 for RDAP.

11 Thank you, Your Honor.

12 THE COURT: All right. Thank you, Mr. Zwerling.

13 All right, Mr. Khweis, please come to the podium.  
14 This is your opportunity to tell me anything you would like to  
15 before I sentence you.

16 MR. ZWERLING: Judge, I have spoken to Mr. Khweis.  
17 He knows that he has that right. He says he is too nervous.  
18 But he would like -- he wrote that letter in lieu of his  
19 testimony applying here. I know the Court has read it. I  
20 would be happy to reread it to the Court.

21 THE COURT: No, I have it. I have read it.

22 Okay. Have a seat.

23 Is that correct, Mr. Khweis?

24 THE DEFENDANT: Yes.

25 THE COURT: All right, then certainly I was going to

1 tell you that anything you did say could be used against you if  
2 there is a future trial in this matter, and also would remind  
3 you of your rights to appeal the jury verdict. And please  
4 consult with your counsel about that appeal process.

5 It is an unusual case. There is no event, no  
6 instigation, no friend, no great anger, no suicidal ideations  
7 that radicalized you, but there is no question that you did  
8 radicalize. And once you made that decision, you deliberately  
9 and methodically and carefully and cleverly planned out your  
10 travel in joining ISIL.

11 You are not naive. You are not intellectually  
12 challenged. You're not gullible. You're not confused and  
13 indecisive in choosing to join ISIL. Instead, you have got an  
14 Associate's degree in criminal justice. You have had multiple  
15 employments. You have a stable family.

16 It was painful to watch your father and your mother  
17 -- your father and brother here almost every day, and your  
18 mother some, knowing that they had raised a young man in the  
19 United States to become a contributing member of the community.  
20 And they worked hard to try and make sure that that occurred.  
21 And the pain was obvious every day that they were here when  
22 they heard the testimony.

23 And I recall very vividly your father shaking his  
24 head, and it was a combination of perhaps the rulings that were  
25 being made as well as the testimony that he heard.

1                   But you very clearly understand right from wrong.  
2 You understood the magnitude of the decision you were making to  
3 join ISIL. I mean, you selected it after doing research on  
4 other terrorist organizations. And then you planned out how to  
5 avoid detection, to try and contact a terrorist in England on  
6 your way over to get some counseling.

7                   The movements between London and finally into Syria  
8 and the methods that you used were -- they clearly reflect  
9 somebody that absolutely, without question, wanted to join this  
10 terrorist organization, even though you were very aware of what  
11 they stood for, what would be expected of you when you got  
12 there. I mean, the Paris attacks had just occurred. You were  
13 aware of the horrible atrocities that ISIL members had  
14 committed over the intervening years.

15                  So there is no question you made that decision and  
16 you joined ISIS and ISIL, and you stayed there for  
17 two-and-a-half months. You patiently awaited the process under  
18 which you would become eligible to become a fighter. And  
19 before that occurred, you made the decision to leave.

20                  So the crime, obviously, is one of the most serious  
21 that you can commit. It's why the Guidelines are what they are  
22 and how serious they are.

23                  I think Mr. Zwerling absolutely has the right read on  
24 the mitigating factors. You didn't harm anybody, you didn't  
25 kill anybody, you left of your own volition. There is always

1 the suspicion that perhaps you left so you could become a mole  
2 and operate from the United States. It's not unheard of that  
3 that occurs. But there is no evidence that you left under  
4 those circumstances to come back to the United States and await  
5 further orders.

6 So I believe that you left because you became  
7 disillusioned with the caliphate, that you were not committed  
8 to follow through and be a fighter.

9 You ultimately provided information to the FBI which  
10 was valuable, as stated. And I certainly think that that is  
11 evidence of perhaps that there is a chance in the future of  
12 rehabilitation, and that the day that you are freed you will  
13 make a contribution to your community versus turn, as Dr.  
14 Ghannam believes, the longer you stay in prison, the more  
15 radicalized you will become. I don't think that's necessarily  
16 the case in your -- with the facts of this case. I think he is  
17 incorrect.

18 But when you look at the 3553 factors, we have a very  
19 serious crime. We need to deter you. We need to deter others.

20 I looked carefully at the disparity of the sentences  
21 that both counsel provided in their sentencing memorandums, and  
22 I don't think that a Guideline sentence is necessary, but I  
23 think that a significant sentence is necessary under the 3553  
24 factors.

25 I am going to sentence you to 180 months on Counts 1

1 and 2. Those sentences will run concurrently.

2 I am going to sentence you to 60 months on Count 3.

3 That must operate consecutively by statute.

4 I am going to sentence you to ten years of supervised  
5 release. As special conditions, I will order that you  
6 participate in substance abuse testing and treatment; mental  
7 health testing and treatment; waiver of confidentiality; not  
8 use a computer outside your residence -- not use a computer  
9 without permission by the Probation officer; that you have no  
10 contact with any individuals or groups involved in terrorist  
11 activities.

12 I will not impose a fine or costs of incarceration  
13 because I find you are unable to afford them.

14 I will give you credit for time served from your date  
15 of arrest by the Peshmerga on March 16 of 2016.

16 I will ask the Bureau of Prisons to consider the  
17 Cumberland facility, and also have you evaluated for the  
18 residential drug program while you are incarcerated.

19 As I said, you have a right to appeal. Please  
20 consult with your counsel about that, those appeal matters.

21 The forfeiture, was there any further argument that  
22 the parties wanted to make?

23 MR. PAREKH: Not from the Government.

24 MS. CARMICHAEL: Not from the defense, Your Honor.

25 THE COURT: I am going to enter the forfeiture order

1 for the reasons previously stated and for the reasons provided  
2 by the Government response to the latest submission.

3 Anything else in this case?

4 MR. FITZPATRICK: No, sir. Thank you, Your Honor.

5 MR. ZWERLING: No, Your Honor.

6 THE COURT: All right. We're going to take about  
7 35 minutes and break for lunch, and we will come back with our  
8 civil docket at that time.

9 All right, we're in recess.

10 -----  
11 HEARING CONCLUDED

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19 I certify that the foregoing is a true and  
20 accurate transcription of my stenographic notes.

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24

25

/s/ Norman B. Linnell  
Norman B. Linnell, RPR, CM, VCE, FCRR